

ST 01-28

Tax Type: Sales Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	IBT # 0000-0000
)	Assmt # 00 00000000000000
ABC STORES CORPORATION)	
d/b/a ABC FURNITURE)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Tod H. Friedman, Assistant General Counsel, for ABC Stores Corporation d/b/a ABC Furniture.

Synopsis:

The Department of Revenue (“Department”) assessed a late-payment penalty against ABC Stores Corporation d/b/a ABC Furniture (“taxpayer”) for the liability period of August 2000. The taxpayer requested an abatement of the penalty, which was denied by the Department. The taxpayer timely protested the Department’s decision to deny the abatement. Both parties filed Motions for Summary Judgment and a Stipulation of Facts, and a hearing was held on the motions. After reviewing the motions, facts, and supporting documents, it is recommended that the Department’s Motion for Summary Judgment be denied and the taxpayer’s motion be granted.

FINDINGS OF FACT:

1. The taxpayer remitted its April 2000 quarterly-monthly tax twice, resulting in an overpayment of its April 2000 tax in the amount of \$202,071. (Stip. #2)

2. On August 7, 2000, the taxpayer was required to remit its quarter-monthly taxes in the amount of \$73,218 to the Department. (Stip. #3)

3. The taxpayer failed to make the payment on or before August 7, 2000. (Stip. #4)

4. On August 9, 2000, the taxpayer remitted its payment of the August 2000 taxes by Electronic Funds Transfer. (Stip. #5)

5. On November 28, 2000, the Department issued an assessment for the late-payment penalty of \$14,944.98. The taxpayer requested that the penalty be waived. On May 29, 2001, the Department denied the taxpayer's request for the abatement of the penalty. (Stip. #6, #7, #10)

6. On March 16, 2001, the Department issued a Credit Memorandum to the taxpayer for the overpayment of the April 2000 taxes. The Credit Memorandum was reduced by the amount of the penalty that was assessed due to the late payment of the August 2000 taxes. (Stip. #8, #9)

7. The Department abated penalties that it had assessed against the taxpayer for the liability periods of March, April, and May of 2000. (Dept. Group Ex. #1, pp. 10-13)

8. The taxpayer experienced high turnover in its personnel in its Sales & Use Tax Department during the time period that the August 2000 tax was due. The person who was responsible for paying the tax incorrectly processed the electronic funds transfer payment schedule. (Lang Affid. ¶3, 4)

CONCLUSIONS OF LAW:

The Department imposed the penalty for the late payment of the taxes pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 et seq.).

Section 3-3 includes the following provision:

“(c) For purposes of the late payment penalties, the basis of the penalty shall be the tax shown or required to be shown on a return, whichever is applicable, reduced by any part of the tax which is paid on time and by any credit which was properly allowable on the date the return was required to be filed.” (35 ILCS 735/3-3(c)).

Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalty and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department’s regulations concerning reasonable cause provide as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

The taxpayer argues that its payment was late due to an “honest mistake.” The taxpayer experienced high turnover in its personnel during the time that the payment was due, and the person who was responsible for paying the taxes inadvertently and incorrectly processed the electronic funds transfer payment schedule. Once the error was discovered, it was immediately corrected. The taxpayer notes that the return was timely filed, and the taxpayer was only late paying the funds. In addition, the taxpayer already

had sufficient funds on deposit with the Department to pay the tax because of the taxpayer's overpayment from April of 2000. The taxpayer asserts that the fact that it had a credit on its account with the Department at the time of the late payment should militate against assessing the penalty.

The Department contends that although the taxpayer had an overpayment that resulted in a Credit Memorandum being issued on March 16, 2001, the quarter-monthly payment was still delinquent and the taxpayer did not direct the Department to use the overpayment for the August 7, 2000 liability. The Department claims that the existence of the overpayment is not a sufficient basis to abate the penalty. In addition, the Department states that the taxpayer has had numerous delinquent filings in the year 2000, and the Department has abated the penalty for those late filings. The Department argues that the taxpayer has not demonstrated reasonable cause for abating the penalty.

The taxpayer has provided sufficient reasons for abating the penalty. Section 3-3(c) of the UPIA provides that the late payment penalty shall be based on the tax and "reduced * * * by any credit which was properly allowable on the date the return was required to be filed." (35 ILCS 735/3-3(c)). The taxpayer had a credit of over \$200,000 at the time the August 2000 return was filed. This fact warrants abating the penalty.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's Motion for Summary Judgment be granted and the penalty be abated. It is also recommended that the Department's Motion for Summary Judgment be denied.

Linda Olivero
Administrative Law Judge

Enter: November 7, 2001